

City of Charlottesville Circuit Court

Case No. CL22-196

Cherry Henley, et al v. City of Charlottesville

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I, David A. Schmidt, Chief Deputy Clerk for the City of Charlottesville Circuit Court, certify that the contents of the record listed in the Master Table of Contents constitute the true and complete record and are hereby transmitted to the U.S. District Court for the Western District of Virginia Charlottesville Division on June 1st, 2022.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

CHERRY HENLEY, TANESHA
HUDSON and DAVID MCNAIR,

Petitioners,

v.

Civil Case No. C22-196

CITY OF CHARLOTTESVILLE,

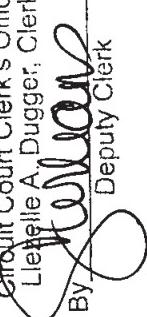
Defendant.

PETITION FOR WRIT OF MANDAMUS and
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Petitioners/Plaintiffs, by counsel, petition this Court for the issuance of a writ of mandamus and for other relief pursuant to Virginia Code § 2.2-3713, to enforce compliance by the Defendant with the provisions of the Virginia Freedom of Information Act (“FOIA Act”) and to issue a declaratory judgment and injunction to enforce compliance with the First Amendment and state:

PARTIES

1. Cherry Hanley is a resident of the Commonwealth of Virginia. She heads an organization, Lending Hands, which assists women leaving jail and prisons. She is also a member of the People’s Coalition which strives to reform the criminal legal system and is otherwise active on those issues. She sues in her individual capacity.
2. Tanesha Hudson is a resident of the Commonwealth of Virginia and an activist within the Charlottesville community on criminal legal issues. She had a First Amendment claim against the city that was settled in August 2020 with the city requiring a waiver of her constitutional right to discuss the settlement.
3. David McNair is a resident of the Commonwealth of Virginia. He is a journalist who has spent years covering political issues in Charlottesville. He is the founder and editor of an on-line news publication called The DTM.
4. Defendant City of Charlottesville is a political subdivision of the Commonwealth of Virginia and a “public body” within the meaning of the FOIA Act.

4/28/22 0 12:30P
FILED
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Liebelle A. Dugger, Clerk
By 
Deputy Clerk

FACTS

5. On March 24, 2022, the following FOIA request was submitted to the City of Charlottesville:

For the years 2020 and 2021, all records concerning the settlement of claims of police misconduct, or other violation of constitutional rights, by the city or any of its employees, whether or not the claim was filed in an administrative or judicial agency.

6. In response, on April 1, 2022, Defendant provided emails and letters, the substance of which were redacted and which relate to three cases that were settled. *See Exhibit A.*
7. On April 4, 2022, a second FOIA request was submitted to the city as follows:

For the years 2017, 2018 and 2019, all records concerning the settlement of claims of police misconduct, or other violation of constitutional rights, by the city or any of its employees, whether or not the claim was filed in an administrative or judicial agency and whether or not the claim was handled directly by the city or by VRSA on its behalf.

8. On April 15, 2022, Defendant provided a response consisting of several emails and letters regarding two other cases that were settled. *See Exhibit B.*
9. In nearly all instances, Defendant invoked Va. Code § 2.2-3705.1 (1), (2) and (3) collectively to justify its redactions.
10. Va. Code § 2.2-3705.1 (1) provides that a public entity may withhold “personnel information.”
11. Va. Code § 2.2-3705.1 (2) provides that a public entity may withhold any information covered by the “attorney-client privilege.”
12. Va. Code § 2.2-3705.1 (3) provides that a public entity may withhold attorney “work product.”

13. Although many of the redactions in the documents provided appear to be supported by the exemptions cited (though not all documents are subject to all three of the sections cited by Defendant), there is a notable exception:

A July 31, 2020 redacted letter was provided which was from the lawyer for one of the complainants mentioned in the document production to a lawyer for the city (and the employee who was the subject of the complaint). Defendant cited Code §§ 2.2-3705.1 (2) and (3). See Exhibit A. However, it is hard to imagine how the redaction of any contents of a letter from the lawyer of a putative plaintiff to a lawyer for the city could be justified by the lawyer-client or the attorney work product privilege.

14. More importantly, it is clear that the five cases covered by Defendant's responses were settled but Defendant failed to provide the actual settlement agreements or the releases provided by the plaintiffs or to justify their exclusion.
15. In addition, there were other cases that were settled during the relevant time period but not included in the production by Defendant. Counsel is personally aware of one such settlement in June, 2018 in the case of *Hopkins v. Handy*, Civil Action No. 3:18-cv-00023 (W.D.Va.) as he was counsel of record for plaintiff in that case.
16. Moreover, Defendant has failed to justify the exclusion of settlement documents from its responses to the FOIA requests.
17. Defendant has a practice of referring most claims to its insurer, the Virginia Risk Sharing Association (VRSA). Acting as the agent of the Defendant, and pursuant to contract, VRSA chooses the attorney and monitors the litigation. If a settlement is reached, it is reflected in a signed agreement and a release is provided by the plaintiff.
18. In each instance in which a settlement is released, the City or its agent VRSA requires the claimant to sign an agreement not to disclose the terms of the settlement and/or the incident which gave rise to the complaint self and/or to promise not to disparage the city or any of its employees or officers.
19. According to the city, VRSA does not inform the Defendant of the outcome of cases in which a settlement is reached.

20. Although counsel inquired, the City refused to advise whether any cases were referred to VRSA that were not included in its responses to Petitioner. *See Exhibit C.*
21. On information and belief, when the city or an employee is sued, there is a mechanism within the city to direct the person or to refer the matter to the city's insurer. No records of that procedure with respect to the five cases that were identified by Defendant were provided.

FIRST CAUSE OF ACTION
(FOIA Mandamus)

22. The Virginia Freedom of Information Act ensures the people of the Commonwealth ready access to public records in the custody of a public body unless the public body, its officers, or employees specifically elect to exercise an exemption provided by the Act or another statute. Virginia Code § 2.2-3700(B).
23. The Act states that its provisions "shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records shall be narrowly construed and no record shall be withheld from the public unless specifically made exempt pursuant to this chapter or other specific provision of law." Virginia Code § 2.2-3700(B).
24. In cases where parts of the requested records are being withheld, the Act requires that the public body delete or excise "only that portion of the record to which an exemption applies" and "release the remainder of the record." Virginia Code § 2.2-3704(B)(2).
25. The failure to provide the settlement agreements and associated documents in the five cases mentioned in Defendant's FOIA responses violates the FOIA Act.
26. The failure to provide the settlement documents held by its agent, VRSA, or to justify their exclusion or even mention their existence violates the most fundamental requirements of the FOIA Act.
27. The above violations of the FOIA Act by Defendant, City of Charlottesville, deprives not only petitioners, but every citizen of the community and other interested persons, the rights granted to them under the provisions of the FOIA Act.

28. In addition, the policy and practice of the city requiring non-disclosure and/or non-disparagement agreements as a condition of settlement violates the First Amendment rights not only of the affected claimant but of the body politic which has a right to hear information about its government and how it is spending taxpayers money.
29. This Petition is supported by a declaration of counsel showing good cause, attached hereto as Exhibit D.

SECOND CAUSE OF ACTION
(First Amendment)

30. The requirement of the City of Charlottesville that persons who file claims against the city or its employees must agree, as a condition of any settlement, to limit their First Amendment right to discuss the case and the terms of the settlement, violates the First Amendment to the United States Constitution.
31. This practice of the Defendant violates the First Amendment rights not only of the person settling but of the public writ large as they are deprived of highly newsworthy information about the conduct of their government.

WHEREFORE, Petitioners/Plaintiffs respectfully pray that this Court:

- a. Find that the failure to disclose the requested information violated the Virginia Freedom of Information Act;
- b. Issue a writ of mandamus to the City of Charlottesville, directing that it fully respond to Petitioner's FOIA requests of March 24 and April 4, 2022;
- c. Award Petitioners the reasonable costs and attorney's fees incurred herein pursuant to the provisions of Virginia Code § 2.2-3713(D);
- d. Issue a declaratory judgment that the practice of the City of Charlottesville requiring claimants, as a condition of settlement, to waive their right to free speech violates the First Amendment to the United States Constitution.
- e. Issue a preliminary and permanent injunction prohibiting the Defendant City of Charlottesville from enforcing the non-disclosure provision in the settlement reached with Plaintiff Tanesha Hudson.

- f. Award Plaintiffs the reasonable costs and attorney's fees incurred herein pursuant to the provisions of 42 U.S.C. § 1988.
- g. Grant such other and further relief as the Court finds just and proper.

Respectfully submitted,
CHERRY HENLEY,
TANESHA HUDSON and
DAVID MCNAIR
By Counsel

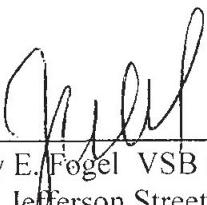

Jeffrey E. Fogel VSB #76345
913 E. Jefferson Street
Charlottesville, VA 22903
(434) 984-0300
(434) 220-4852 (fax)
jeff.fogel@gmail.com
Counsel for Petitioners/Plaintiffs

EXHIBIT A

3/30/22, 2:30 PM

Mail - Robertson, Lisa - Outlook
Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)

Re: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC
Charlottesville FRE 408 SETTLEMENT NEGOTIATIONS

David Corrigan <dcorrigan@hccw.com>

Thu 2/10/2022 2:16 PM

To: Robertson, Lisa <robertsonl@charlottesville.gov>

Cc: David Corrigan <dcorrigan@hccw.com>;Missy York <myork@hccw.com>

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Lisa -



I am on a plane and headed off line.

David

 .cid:3388473644_15965321
DAVID P. CORRIGAN
dcorrigan@hccw.com | **DIRECT** [804.762.8017](tel:804.762.8017)

Harman Claytor Corrigan & Wellman
Post Office Box 70280 | Richmond, VA 23255
4951 Lake Brook Dr. | Suite 100 | Glen Allen, VA 23060
CELL [804.543.7667](tel:804.543.7667) | **FAX** [804.212.0862](tel:804.212.0862) | **WEB** hccw.com

Sent from my iPhone

On Feb 10, 2022, at 9:55 AM, Robertson, Lisa <robertsonl@charlottesville.gov> wrote:

yes. I will give Missy a call shortly, or you if you'd prefer (but I hear you are traveling)

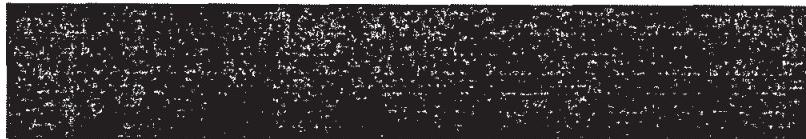
From: David Corrigan <dcorrigan@hccw.com>
Sent: Wednesday, February 9, 2022 9:24 PM
To: Robertson, Lisa <robertsonl@charlottesville.gov>
Cc: Missy York <myork@hccw.com>; David Corrigan <dcorrigan@hccw.com>
Subject: Fwd: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC
Charlottesville FRE 408 SETTLEMENT NEGOTIATIONS

3/30/22, 2:30 PM

Mail - Robertson, Lisa - Outlook
Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)

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Lisa -



Thanks.

David

cid:3388473644_15965321
DAVID P. CORRIGAN
dcorrigan@hccw.com | **DIRECT** [804.762.8017](tel:804.762.8017)

Harman Clayton Corrigan & Wellman
Post Office Box 70280 | Richmond, VA 23255
4951 Lake Brook Dr. | Suite 100 | Glen Allen, VA 23060
CELL [804.543.7667](tel:804.543.7667) | **FAX** [804.212.0862](tel:804.212.0862) | **WEB** hccw.com

Sent from my iPhone

Begin forwarded message:

From: Richard Milnor <RMilnor@zmc-law.com>
Date: February 9, 2022 at 8:14:37 PM EST
To: David Corrigan <dcorrigan@hccw.com>
Subject: Fwd: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville FRE 408 SETTLEMENT NEGOTIATIONS



Rich

434-996-9257?

Sent from my iPhone

Begin forwarded message:

From: Richard Milnor <RMilnor@zmc-law.com>
Date: February 9, 2022 at 7:47:41 PM EST
To: Greg Washington <gwashingt0n@vrsa.us>
Cc: Richard Milnor <RMilnor@zmc-law.com>, David Corrigan

3/30/22, 2:30 PM

Mail - Robertson, Lisa - Outlook
Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)
<dcorrigan@hccw.com>, Missy York <myork@hccw.com>
Subject: Fwd: City Council of the City of Charlottesville adv.
Richardson 3:21-cv-45 USDC Charlottesville FRE 408
SETTLEMENT NEGOTIATIONS



Rich
434-996-9257

Sent from my iPhone

Begin forwarded message:

From: "Keith B. French"
<kfrench@peoplefirstfirm.com>
Date: February 9, 2022 at 7:18:05 PM EST
To: Richard Milnor <RMilnor@zmc-law.com>
Cc: volney brand <volney1@brandlaw.us.com>
Subject: Re: City Council of the City of
Charlottesville adv. Richardson 3:21-cv-45 USDC
Charlottesville FRE 408 SETTLEMENT
NEGOTIATIONS



Keith



Keith B. French Law, PLLC

Keith French, Esq.
Owner and Managing Attorney

832-243-6153 832-243-1927

kfrench@peoplefirstfirm.com

www.keithfrenchlaw.com

2010 E. Broadway St, Suite 132 Pearland, TX 77581

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Mail - Robertson, Lisa - Outlook
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kfrench@peoplefirstfirm.com immediately upon your receipt and
destroy the transmission.

From: Richard Milnor <RMilnor@zmc-law.com>
Date: Wednesday, February 9, 2022 at 5:30 PM
To: "Keith B. French" <kfrench@peoplefirstfirm.com>
Cc: volney brand <volney1@brandlaw.us.com>,
Richard Milnor <RMilnor@zmc-law.com>
Subject: Re: City Council of the City of Charlottesville
adv. Richardson 3:21-cv-45 USDC Charlottesville FRE
408 SETTLEMENT NEGOTIATIONS



Rich

Sent from my iPhone

On Feb 9, 2022, at 5:20 PM, Richard Milnor
<RMilnor@zmc-law.com> wrote:



Rich

Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

From: Keith B. French
<kfrench@peoplefirstfirm.com>
Sent: Wednesday, February 9, 2022 3:05 PM
To: Richard Milnor <RMilnor@zmc-law.com>
Cc: volney brand <volney1@brandlaw.us.com>
Subject: Re: City Council of the City of
Charlottesville adv. Richardson 3:21-cv-45

3/30/22, 2:30 PM

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USDC Charlottesville FRE 408 SETTLEMENT
NEGOTIATIONS



Thanks again,

Keith



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From: Richard Milnor <RMilnor@zmc-law.com>
Date: Wednesday, February 9, 2022 at 12:29 PM
To: "Keith B. French" <kfrench@peoplefirstfirm.com>
Cc: volney brand <volney1@brandlaw.us.com>, Richard

3/30/22, 2:30 PM

Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)
Mail - Robertson List - Outlook
Milnor <RMilnor@zmc-law.com>
Subject: RE: City Council of the City of
Charlottesville adv. Richardson 3:21-cv-45
USDC Charlottesville FRE 408 SETTLEMENT
NEGOTIATIONS



Rich

Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

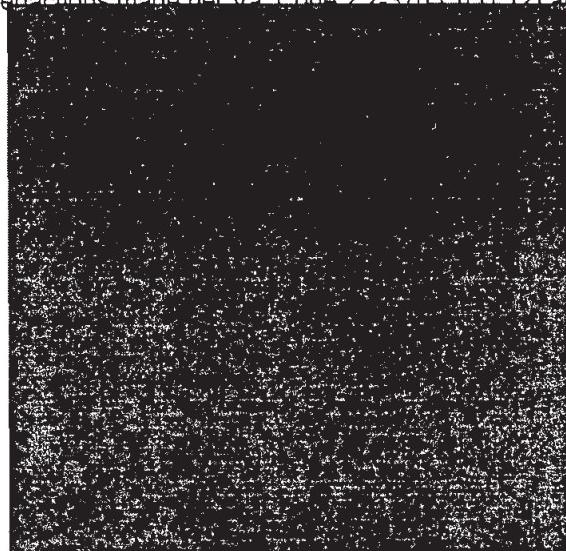
From: Keith B. French
<kfrench@peoplefirstfirm.com>
Sent: Friday, February 4, 2022 6:58 PM
To: Richard Milnor <RMilnor@zmc-law.com>
Cc: volney brand <volney1@brandlaw.us.com>
Subject: Re: City Council of the City of
Charlottesville adv. Richardson 3:21-cv-45
USDC Charlottesville FRE 408 SETTLEMENT
NEGOTIATIONS

Rich,



3/30/22, 2:30 PM

Redactions made per Va. Code 22.3705.1(1), (2) and (3)



Keith

Keith B. French Law, PLLC

Keith French, Esq.,
Owner and Managing Attorney



KEITH B. FRENCH LAW PLLC

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✉ kfrench@peoplefirstfirm.com

✉ www.keithfrenchlaw.com

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From: Richard Milnor <RMilnor@zmc-law.com>
Date: Friday, February 4, 2022 at 3:03 PM
To: "Keith B. French"
<kfrench@peoplefirstfirm.com>
Cc: volney brand
<volney1@brandlaw.us.com>, Richard
Milnor <RMilnor@zmc-law.com>
Subject: RE: City Council of the City of
Charlottesville adv. Richardson 3:21-cv-45
USDC Charlottesville FRE 408 SETTLEMENT
NEGOTIATIONS



Hope you are feeling better.

Have a good weekend.

Rich
Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

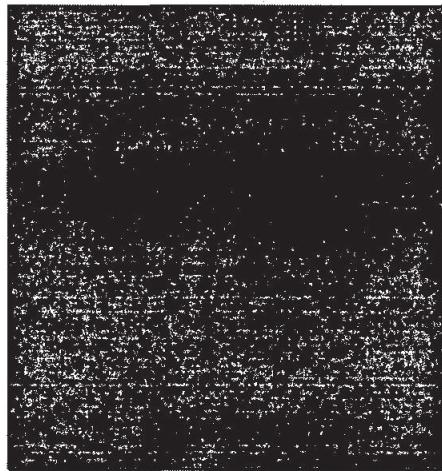
From: Keith B. French
<kfrench@peoplefirstfirm.com>
Sent: Friday, January 21, 2022 3:08 PM
To: Richard Milnor <RMilnor@zmc-law.com>
Cc: volney brand <volney1@brandlaw.us.com>
Subject: Re: City Council of the City of

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Charlottesville adv. Richardson 3:21-cv-45
USDC Charlottesville



On Jan 21, 2022, at 10:13 AM,
Richard Milnor <RMilnor@zmc-law.com> wrote:



Have a good weekend and hope
you are feeling better.

Rich

Richard H. Milnor, Esq.
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LTD.**
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P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

From: Richard Milnor
<RMilnor@zmc-law.com>
Sent: Thursday, January 20, 2022
4:12 PM
To: Keith B. French
<kfrench@peoplefirstfirm.com>
Cc: Richard Milnor
<RMilnor@zmc-law.com>
Subject: RE: City Council of the
City of Charlottesville adv.
Richardson 3:21-cv-45 USDC
Charlottesville

Keith—Sorry I missed your call.
Thanks for the quick response.

3/30/22, 2:30 PM

Redactions made per Va. Mail Robertson, Lisa, Outlook
Code 2.2-3705.1(1), (2) and (3)

I'll get back to you as soon as I'm
able.

Rich

Richard H. Milnor, Esq.
**ZUNKA, MILNOR & CARTER,
LTD.**
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

From: Keith B. French
<kfrench@peoplefirstfirm.com>
Sent: Thursday, January 20, 2022
3:21 PM
To: Richard Milnor
<RMilnor@zmc-law.com>
Cc: volney brand
<volney1@brandlaw.us.com>
Subject: Re: City Council of the
City of Charlottesville adv.
Richardson 3:21-cv-45 USDC
Charlottesville

Richard,



Please let us know your thoughts
at your earliest convenience.

Thanks,

Keith

3/30/22, 2:33 PM

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Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)

**FW: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC
Charlottesville FRE 408 SETTLEMENT NEGOTIATIONS**

David Corrigan <dcorrigan@hccw.com>

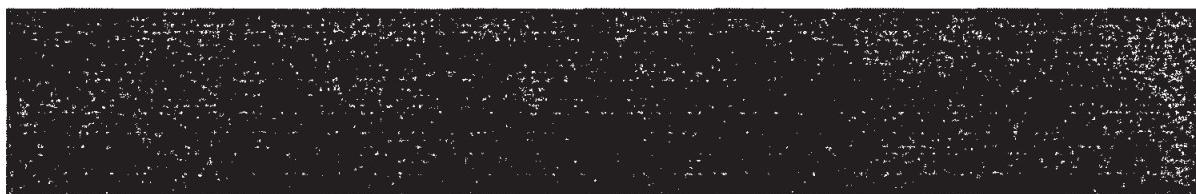
Wed 2/9/2022 1:38 PM

To: Robertson, Lisa <robertsonl@charlottesville.gov>

Cc: David Corrigan <dcorrigan@hccw.com>;Missy York <myork@hccw.com>

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Lisa –



David

||||

DAVID P. CORRIGAN

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Post Office Box 70280 | Richmond, VA 23255

4951 Lake Brook Dr. | Suite 100 | Glen Allen, VA 23060

CELL 804.543.7667 | FAX 804.212.0862 | WEB hccw.com

member of the hormonie group

Celebrating 30 years

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From: David Corrigan
Sent: Wednesday, February 9, 2022 1:36 PM
To: Richard Milnor <RMilnor@zmc-law.com>; Greg Washington <gwashington@vrsa.us>
Cc: Missy York <myork@hccw.com>; David Corrigan <dcorrigan@hccw.com>
Subject: RE: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville FRE 408 SETTLEMENT NEGOTIATIONS

Thanks for keeping us informed, Rich.

3/30/22, 2:33 PM

Mail - Robertson, Lisa - Outlook
Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)



David

||||

DAVID P. CORRIGAN

dcorrigan@hccw.com | DIRECT 804.762.8017

Harman Claytor Corrigan & Wellman

Post Office Box 70280 | Richmond, VA 23255

4951 Lake Brook Dr. | Suite 100 | Glen Allen, VA 23060

CELL 804.543.7667 | FAX 804.212.0862 | WEB hccw.com

member of the hormone group

Celebrating 30 years

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From: Richard Milnor [<mailto:RMilnor@zmc-law.com>]
Sent: Wednesday, February 9, 2022 1:31 PM
To: Greg Washington <gwashington@vrsa.us>
Cc: Richard Milnor <RMilnor@zmc-law.com>; David Corrigan <dcorrigan@hccw.com>; Missy York <myork@hccw.com>
Subject: FW: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville FRE 408 SETTLEMENT NEGOTIATIONS

Rich
434-996-9257

Richard H. Milnor, Esq.
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414 Park Street
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Fax: (434) 977-0198

From: Richard Milnor <RMilnor@zmc-law.com>
Sent: Wednesday, February 9, 2022 1:28 PM
To: Keith B. French <kfrench@peoplefirstfirm.com>
Cc: volney brand <volney1@brandlaw.us.com>; Richard Milnor <RMilnor@zmc-law.com>

3/30/22, 2:33 PM

Redactions made per Va. Mail - Robertson, Lisa ; Outlook
Code 2.2-3705.1(1), (2) and (3)

Subject: RE: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville FRE 408
SETTLEMENT NEGOTIATIONS



Rich

Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

From: Keith B. French <kfrench@peoplefirstfirm.com>
Sent: Friday, February 4, 2022 6:58 PM
To: Richard Milnor <RMilnor@zmc-law.com>
Cc: volney brand <volney1@brandlaw.us.com>
Subject: Re: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville FRE 408
SETTLEMENT NEGOTIATIONS

Rich,



Keith

3/30/22, 2:33 PM

Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)

Keith B. French Law, PLLC

Keith French, Esq.
Owner and Managing Attorney



KEITH B. FRENCH LAWTM

832-243-6153 832-243-1927

kfrench@peoplefirstfirm.com

www.keithfrenchlaw.com

2010 E. Broadway St, Suite 132 Pearland, TX 77581

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From: Richard Milnor <RMilnor@zmc-law.com>

Date: Friday, February 4, 2022 at 3:03 PM

To: "Keith B. French" <kfrench@peoplefirstfirm.com>

Cc: volney brand <volney1@brandlaw.us.com>, Richard Milnor <RMilnor@zmc-law.com>

Subject: RE: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville
FRE 408 SETTLEMENT NEGOTIATIONS

A large rectangular black box used to redact sensitive information from the email.

Hope you are feeling better.

Have a good weekend.

Rich

Richard H. Milnor, Esq.

ZUNKA, MILNOR & CARTER, LTD.

414 Park Street

P.O. Box 1567

Charlottesville, VA 22902

Phone: (434) 977-0191

Fax: (434) 977-0198

From: Keith B. French <kfrench@peoplefirstfirm.com>

Sent: Friday, January 21, 2022 3:08 PM

To: Richard Milnor <RMilnor@zmc-law.com>

Cc: volney brand <volney1@brandlaw.us.com>

Subject: Re: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville

Looking at this now. Any updates regarding settlement?

On Jan 21, 2022, at 10:13 AM, Richard Milnor <RMilnor@zmc-law.com> wrote:

3/30/22, 2:33 PM

Mail - Robertson, Lisa - Outlook
Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)

Keith—Attached is a copy of the Motion For Extension I filed yesterday. I would appreciate your consent to the motion. Assuming you consent Mr. Wilson could file a simple Notice to that effect today or I can file a supplemental motion noting Plaintiff's consent. Please advise.

I appreciate your consideration of this request.

Have a good weekend and hope you are feeling better.

Rich

Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

From: Richard Milnor <RMilnor@zmc-law.com>
Sent: Thursday, January 20, 2022 4:12 PM
To: Keith B. French <kfrench@peoplefirstfirm.com>
Cc: Richard Milnor <RMilnor@zmc-law.com>
Subject: RE: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville

Keith—Sorry I missed your call. Thanks for the quick response. I'll get back to you as soon as I'm able.

Rich

Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

From: Keith B. French <kfrench@peoplefirstfirm.com>
Sent: Thursday, January 20, 2022 3:21 PM
To: Richard Milnor <RMilnor@zmc-law.com>
Cc: volney brand <volney1@brandlaw.us.com>
Subject: Re: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville

Richard,



3/30/22, 2:33 PM

Redactions made per Va. Code 2.2-3705.1(1) (2) and (3)

Please let us know your thoughts at your earliest convenience.

Thanks,

Keith

NOTICE: This email and attachment(s), if any, is a privileged confidential transmission to or from a law firm intended solely for the use of the designated recipient. This transmission may also contain information that is protected from disclosure such as mental impressions or other work product of an attorney. If you are not the designated recipient of this transmission, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this transmission is strictly prohibited. If you receive this transmission in error, please notify Keith B. French Law, PLLC at kfrench@peoplefirstfirm.com immediately upon your receipt and destroy the transmission.

From: Richard Milnor <RMilnor@zmc-law.com>
Date: Thursday, January 20, 2022 at 1:49 PM
To: "Keith B. French" <kfrench@peoplefirstfirm.com>
Cc: Richard Milnor <RMilnor@zmc-law.com>
Subject: RE: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville

Keith – Good talking with you yesterday afternoon. I look forward to talking with you further after you have been able to discuss with Dr. Richardson.

Unfortunately the COVID19 situation in my office has gotten worse and as I indicated yesterday I might need to request an extension to file responsive pleadings. I am going to note my appearance this afternoon and file a motion for extension.

I hope this email finds you feeling better than yesterday.

Rich

Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

From: Keith B. French <kfrench@peoplefirstfirm.com>
Sent: Tuesday, January 18, 2022 12:12 PM
To: Richard Milnor <RMilnor@zmc-law.com>; kevin@kevinewilsonlaw.com
Cc: volney brand <volney1@brandlaw.us.com>
Subject: Re: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville

We will call you at 1:45 PM central. I believe that is 2:45 PM your time.

3/30/22, 2:33 PM

Mail - Robertson, Lisa - Outlook
Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)

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From: Richard Milnor <RMilnor@zmc-law.com>
Date: Saturday, January 15, 2022 at 10:06 AM
To: "Keith B. French" <kfrench@peoplefirstfirm.com>, "kevin@kevinwilsonlaw.com" <kevin@kevinwilsonlaw.com>
Cc: volney brand <volney1@brandlaw.us.com>, Richard Milnor <RMilnor@zmc-law.com>
Subject: RE: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville

Keith- Wednesday anytime after noon works fine for me.

Have a great weekend.

Rich

Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

From: Keith B. French <kfrench@peoplefirstfirm.com>
Sent: Friday, January 14, 2022 6:49 PM
To: Richard Milnor <RMilnor@zmc-law.com>; kevin@kevinwilsonlaw.com
Cc: volney brand <volney1@brandlaw.us.com>
Subject: Re: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville

You don't often get email from kfrench@peoplefirstfirm.com. Learn why this is important
Mr. Milnor,

I apologize for the delayed response. I have been travelling all week and unable to answer my emails promptly. I am available Wednesday through Friday next week for a call. If we can set up a conference call that would great. I have cc'd my co-counsel.

Have a great weekend.

Keith

3/30/22, 2:33 PM

Mail - Robertson, Lisa - Outlook
Redactions made per Va. Code 2.2-3705.1(1), (2) and (3)

NOTICE: This email and attachment(s), if any, is a privileged confidential transmission to or from a law firm intended solely for the use of the designated recipient. This transmission may also contain information that is protected from disclosure such as mental impressions or other work product of an attorney. If you are not the designated recipient of this transmission, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this transmission is strictly prohibited. If you receive this transmission in error, please notify Keith B. French Law, PLLC at kfrench@peoplefirstfirm.com immediately upon your receipt and destroy the transmission.

From: Richard Milnor <RMilnor@zmc-law.com>
Date: Thursday, January 13, 2022 at 1:58 PM
To: "Keith B. French" <kfrench@peoplefirstfirm.com>, "kevin@kevinwilsonlaw.com" <kevin@kevinwilsonlaw.com>
Cc: Richard Milnor <RMilnor@zmc-law.com>
Subject: City Council of the City of Charlottesville adv. Richardson 3:21-cv-45 USDC Charlottesville

Mr. French & Mr. Wilson—I will be representing defendant City Council of the City of Charlottesville in the above case. I have reviewed the Amended Complaint and look forward to the opportunity to discuss it with you. Let me know if you are available sometime this afternoon or tomorrow to discuss the case. If so please give me a time & numbers to call.

Rich Milnor

Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

3/30/22, 3:44 PM

Mail - Robertson, Lisa - Outlook

Re: Dr. Richardson's Lawsuit Update

Ms. Walker <imagingajustcville@gmail.com>

Wed 3/9/2022 6:01 PM

To: Robertson, Lisa <robertsonl@charlottesville.gov>

** WARNING: This email has originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Thanks for the update, Ms. Robertson.

Bluest Skies,

Nikuyah

On Wed, Mar 9, 2022 at 5:21 PM Robertson, Lisa <robertsonl@charlottesville.gov> wrote:

Good afternoon.

Attached is a copy of the Notice of Voluntary Dismissal filed by Dr. Richardson's attorneys yesterday, dismissing the case against all of the named defendants, with prejudice (i.e., it cannot be refiled), including you. My understanding is that, based on this Notice, the Court will at some point make a docket entry to reflect that the case is closed. I don't have a copy of the docket entry at this time.

VRSA, as the City's insurer, has the authority to settle a case, and the VRSA attorney appointed to represent City Council dealt with Dr. Richardson's attorney. No City funds are being paid out. Virginia Risk Sharing Association did not assign an attorney to you, John Blair or Heather Hill, because Dr. Richardson never served any of you with process.

Lisa

From: Ms. Walker <imagingajustcville@gmail.com>

Sent: Wednesday, March 9, 2022 3:22 PM

To: Robertson, Lisa <robertsonl@charlottesville.gov>

Subject: Dr. Richardson's Lawsuit Update

** WARNING: This email has originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hi, Ms. Robertson:

Based on the article in the Daily Progress that was released today, I would like to receive an update regarding the matter. Was I assigned a lawyer? How was this lawsuit resolved? Am I included in this "voluntary" dismissal?

Bluest Skies,

Nikuyah

Richard Milnor

From: ecfnoticing@vawd.uscourts.gov
Sent: Thursday, March 10, 2022 10:20 AM
To: vawd_ecf_nef@vawd.uscourts.gov
Subject: Activity in Case 3:21-cv-00045-NKM-JCH Richardson v. City Council of the City of Charlottesville et al Clerks Entry of Dismissal Pursuant to FRCP 41

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Western District of Virginia

Notice of Electronic Filing

The following transaction was entered on 3/10/2022 at 10:19 AM EST and filed on 3/10/2022

Case Name: Richardson v. City Council of the City of Charlottesville et al

Case Number: 3:21-cv-00045-NKM-JCH

Filer:

WARNING: CASE CLOSED on 03/10/2022

Document Number: 32 (No document attached)

Docket Text:

Clerks Entry of Dismissal with prejudice Pursuant to FRCP 41(a)(1)(A)(ii) (dg)

3:21-cv-00045-NKM-JCH Notice has been electronically mailed to:

Richard Hustis Milnor rmilnor@zmc-law.com

David Patrick Corrigan dcorrigan@hccw.com, mbryant@hccw.com, rausenflock@hccw.com

Darren Scott Haley DDGroup5@aol.com

Melissa Yvonne York myork@hccw.com, akranz@hccw.com, creeves@hccw.com, mbryant@hccw.com

Kevin Eugene Wilson kevin@kevnewilsonlaw.com, beverly_freeman-stjohn@fd.org, monica_callaway@fd.org, sherrie_dorrier@fd.org

Keith French kfrench@peoplefirstfirm.com

3:21-cv-00045-NKM-JCH Notice has been delivered by other means to:

3/10/22, 11:23 AM

CM/ECF - U.S. District Court:vawd

02/08/2022	<u>24</u>	NOTICE of Appearance by David Patrick Corrigan on behalf of Lisa Robertson (Corrigan, David)
02/09/2022	<u>25</u>	PRETRIAL ORDER, CASE REFERRED to Magistrate Judge Joel C. Hoppe. Signed by Senior Judge Norman K. Moon on 02/09/2022. (dg)
02/11/2022	<u>26</u>	Consent MOTION for Extension of Time to File Answer re <u>1</u> Complaint by City Council of the City of Charlottesville. Motions referred to Judge Joel C. Hoppe. (Milnor, Richard)
02/11/2022	<u>27</u>	ORAL ORDER granting <u>23</u> Motion for Extension of Time to File Response/Reply. The deadline for plaintiff to respond to the motion to dismiss, ECF No. 14, is extended to March 2, 2022. Entered by Magistrate Judge Joel C. Hoppe on 2/11/22. <i>This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.</i> (JCH)
02/11/2022	<u>28</u>	ORAL ORDER granting <u>26</u> Motion for Extension of Time to Answer. City Council of the City of Charlottesville answer due 2/28/2022. Entered by Magistrate Judge Joel C. Hoppe on 2/11/22. <i>This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.</i> (JCH)
02/16/2022	<u>29</u>	90 Day Notice (dg)
03/08/2022	<u>30</u>	NOTICE of Voluntary Dismissal by Tarron Richardson (French, Keith)
03/09/2022	<u>31</u>	STIPULATION of Dismissal by Tarron Richardson (French, Keith)
03/10/2022	<u>32</u>	Clerks Entry of Dismissal with prejudice Pursuant to FRCP 41(a)(1)(A)(ii) (dg)

PACER Service Center			
Transaction Receipt			
03/10/2022 11:23:12			
PACER Login:	zmc00013	Client Code:	
Description:	Docket Report	Search Criteria:	3:21-cv-00045-NKM-JCH
Billable Pages:	3	Cost:	0.30

3/30/22, 2:43 PM

Mail - Robertson, Lisa - Outlook

City Council of the City of Charlottesville et al. adv. Dr. Tarron Richardson

Richard Milnor <RMilnor@zmc-law.com>

Tue 3/8/2022 3:18 PM

To: Robertson, Lisa <robertsonl@charlottesville.gov>

Cc: Richard Milnor <RMilnor@zmc-law.com>

1 attachments (59 KB)

SKM_C36822030813590.pdf;

** WARNING: This email has originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. **

Lisa—Attached please find a copy of Plaintiff's Notice of Voluntary Dismissal with prejudice filed today by Plaintiff's counsel. This ends the case.

Richard H. Milnor, Esq.
ZUNKA, MILNOR & CARTER, LTD.
414 Park Street
P.O. Box 1567
Charlottesville, VA 22902
Phone: (434) 977-0191
Fax: (434) 977-0198

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

DR. TARRON RICHARDSON,)	
)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.: 3:21-cv-00045
)	
CITY COUNCIL OF THE CITY)	
OF CHARLOTTESVILLE, et al,)	
)	
<i>Defendants</i>)	

NOTICE OF VOLUNTARY DISMISSAL WITH PREJUDICE

COMES NOW your Plaintiff Dr. Tarron Richardson, by counsel, pursuant to Rule 41(a)(1)(A)(i) & (B) F.R.C.P. and hereby gives his notice of dismissal of this action with prejudice.

Date: March 4 , 2022

Respectfully submitted,

/s/ Kevin Eugene Wilson
Kevin Eugene Wilson
Law Office of Kevin E. Wilson, PLLC
801 Wayne Avenue, Ste 400
Silver Spring, MD 20910
703-775-0484
Fax: 301-883-1533
Email: kevin@kevinewilsonlaw.com

/s/ Keith B. French
Keith B. French
Keith B. French Law, PLLC
2010 E. Broadway St, Suite 132
Pearland, TX 77581
kfrench@peoplefirstfirm.com
Tel: 832-243-6153
Fax: 832-243-1927

/s/ Volney Brand
Volney Brand
Brand Law PLLC
3636 N Hall Ste 610
Dallas, TX 75219
volney@brandlaw.us.com
Tel: 214-932-1472
Fax: 214-932-1473

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, *Keith B French, Jr.*, counsel for Plaintiff, hereby certify that, on this date, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system.

DATE: March 8, 2022

By: /s/Keith B. French, Jr.
KEITH B. FRENCH, JR.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

DR. TARRON RICHARDSON,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No.: 3:21-cv-00045
)	
CITY COUNCIL OF THE CITY)	
OF CHARLOTTESVILLE, et al,)	
)	
<i>Defendants.</i>)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff Dr. Tarron Richardson, by counsel, and Defendants City Council of the City of Charlottesville, by counsel, and Lisa Robertson, by counsel, the parties who have appeared in this action, and pursuant to Rule 41(a)(1)(A)(ii) hereby stipulate to dismissal of this action with prejudice.

Date: March 9, 2022

Respectfully submitted,

/s/ Kevin Eugene Wilson

Kevin Eugene Wilson
Law Office of Kevin E. Wilson, PLLC
801 Wayne Avenue, Ste 400
Silver Spring, MD 20910
703-775-0484
Fax: 301-883-1533
Email: kevin@kevinewilsonlaw.com

/s/ Keith B. French

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Pearland, TX 77581
kfrench@peoplefirstfirm.com
Tel: 832-243-6153
Fax: 832-243-1927

/s/ Volney Brand
Volney Brand
Brand Law PLLC
3636 N Hall Ste 610
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volney@brandlaw.us.com
Tel: 214-932-1472
Fax: 214-932-1473

ATTORNEYS FOR PLAINTIFF

/s/Richard H. Milnor
Richard H. Milnor, Esquire (VSB #14177)
Zunka, Milnor & Carter, Ltd.
414 Park Street
P O Box 1567
Charlottesville VA 22902
Telephone: (434) 977-0191
Facsimile: (434) 977-0198
rmilnor@zmc-law.com

**COUNSEL FOR THE CITY COUNCIL OF
THE CITY OF CHARLOTTESVILLE**

/s/ David Patrick Corrigan
David Patrick Corrigan, Esquire
Harman Claytor Corrigan & Wellman
P.O. Box 70280
Richmond, VA 23255
804-747-5200
P O Box 1567
Fax: 804-747-6085
Email: dcorrigan@hccw.com

/s/ Melissa Yvonne York
Mellissa Yvonne York, Esquire
Harman Claytor Corrigan & Wellman
P.O. Box 70280
Richmond, VA 23255
804-747-5200
P O Box 1567
Fax: 804-747-6085
Email: myork@hccw.com

COUNSEL FOR LISA ROBERTSON

CERTIFICATE OF SERVICE

I, *Keith B French, Jr.*, counsel for Plaintiff, hereby certify that, on this date, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system.

DATE: March 9, 2022

By: /s/Keith B. French, Jr.
KEITH B. FRENCH, JR.

Redactions are made per Va. Code 2.2-3705.1(2) and (3)



DANIEL P. WATKINS, ESQ.

daniel@clarelocke.com

(202) 628-7407

C L A R E L O C K E

L L P

10 Prince Street
Alexandria, Virginia 22314

(202) 628-7400

www.clarelocke.com

July 31, 2020

Mr. Richard Milnor
Zunka, Milnor & Carter
414 Park Street
rmilnor@zmc-law.com

Re: City of Charlottesville's Viewpoint Discrimination Against Tanesha Hudson

Dear Mr. Milnor:

I write to inform you that my law firm represents Ms. Tanesha Hudson in connection with her First Amendment claims against the City of Charlottesville and its Director of Communications Brian Wheeler.¹ Her claims are based on the City's viewpoint discrimination during the May 19, 2020 Cville360 townhall meeting.²



The facts underlying Ms. Hudson's claims are straightforward and beyond dispute. On May 18, 2020, Ms. Hudson attended a townhall meeting hosted by the Charlottesville City Council. During that meeting, Ms. Hudson spoke up and voiced her support for Charlottesville City Manager Dr. Tarron J. Richardson who was facing criticism related to his recent budget proposal.

The next day, May 19, 2020, Mr. Wheeler hosted a public Cville360 townhall meeting, via Zoom, alongside City Councilmember Heather Hill. Mr. Wheeler and Ms. Hill spent approximately thirty-five minutes discussing matters of public concern before Mr. Wheeler opened the floor for comment, inviting members of the public to share remarks or to ask questions. My client was the only person who accepted this invitation and she utilized Zoom technology to notify Mr. Wheeler that she wanted to participate in the public discussion. Mr. Wheeler's response follows:

¹ I understand that you have had previous communications with Mr. Jeffrey E. Fogel regarding this matter. Please direct all future correspondence to my office, and I would appreciate it if you would also send me a copy of your written correspondence with Mr. Fogel connected to this case.

² For the avoidance of all doubt, this letter represents formal notice of claims pursuant to Virginia Code Section 15.2-209 and any other applicable statute.

27

"I do see Tanesha Hudson has raised her hand. Tanesha, I'm going to let you know I'm not going to call on you. And let me tell you why: I think you had plenty to say last night, had a good opportunity with City Council during two matters in front of them for public comment. And at this point, I don't want to bring you on the program because I think we need to follow in those venues, the council procedures. And that includes addressing council as a whole, and not attacking individual members of Council. For this program, it's not a public meeting, so I'm not going to call on you. If somebody else wants to raise their hand, I'm happy to call on you and bring you into the conversation."

Mr. Wheeler thus prohibited Ms. Hudson from participating and he ended the Cville360 townhall meeting a few minutes later.

E
44-2021-0147-00325

[REDACTED]

* * *

[REDACTED]

[REDACTED]

Please let me know if you and the City have time during the first part of next week to discuss this matter.

Until this dispute is resolved, please confirm that the City and Mr. Wheeler have preserved all materials that could become relevant in litigation relating to Ms. Hudson's claims.

Regards,

Daniel P. Watkins

Daniel P. Watkins

From: Spence, Philip
To: Greg Washington
Subject: FW: LAQUINN GILMORE - \$135,000. SETTLEMENT
Date: Wednesday, February 9, 2022 9:18:19 AM

Hi Greg,

Please see below. The claimant called our Attorney's office twice yesterday inquiring as to the status of his payment. The claim number is: 02-20-36740-1-LE

Would you contact Mr. Gilmore and inform him of payment status?

Thank you,

Philip Spence
Risk Manager
City of Charlottesville
434-970-3862



From: Smith, Ellonde <smithel@charlottesville.gov>
Sent: Tuesday, February 8, 2022 1:51 PM
To: Spence, Philip <spencep@charlottesville.gov>
Subject: LAQUINN GILMORE - \$135,000. SETTLEMENT

Good afternoon, Phillip!

This is in regards to a Federal suit against City Police Officers. His Attorney is Jeffrey Fogel. He informed me that he is yet to receive his money. Allyson Davies suggested I email you about this, and based on my conversation with you about this matter, I am emailing this to you.

Mr. Gilmore's telephone number is: (434) 327-2941.

Below is what I found on the Daily Progress page, as you said you would have to look this up.

Lawsuit over violent city police incident

From: Spence, Philip
To: Smith, Ellonde
Subject: RE: LAQUINN GILMORE - \$135,000. SETTLEMENT
Date: Tuesday, February 8, 2022 1:52:53 PM

Thanks Ellonde,

Since VRSA is handling this claim, I will request the claims representative for VRSA to reach out to Mr. Gilmore regarding the payment of this claim.

Best,

Philip Spence
Risk Manager
City of Charlottesville
434-970-3862



From: Smith, Ellonde <smithel@charlottesville.gov>
Sent: Tuesday, February 8, 2022 1:51 PM
To: Spence, Philip <spencep@charlottesville.gov>
Subject: LAQUINN GILMORE - \$135,000. SETTLEMENT

Good afternoon, Phillip!

This is in regards to a Federal suit against City Police Officers. His Attorney is Jeffrey Fogel. He informed me that he is yet to receive his money. Allyson Davies suggested I email you about this, and based on my conversation with you about this matter, I am emailing this to you.

Mr. Gilmore's telephone number is: (434) 327-2941.

Below is what I found on the Daily Progress page, as you said you would have to look this up.

Lawsuit over violent city police incident

EXHIBIT B

Rice, Jessica A

From: Rice, Jessica A
Sent: Monday, February 13, 2017 12:02 PM
To: Fogel, Jeff
Cc: Robertson, Lisa
Subject: RE: Tasha Hudson

Good Afternoon Mr. Fogel,

The City's Risk Management office has received your request for consideration of settlement in a matter regarding a traffic stop involving a Charlottesville Police officer. As I am sure you are aware, and pursuant to section § 15.2-209 of the Code of Virginia, all claims against the City and requests for compensation must be submitted in writing for processing. Claims filed against the City must contain factual information regarding the details of the incident, as well as the monetary value of the compensation that is being sought. Once the claim is filed with our office, the City's insurance provider will review the file and determine if the claim is compensatory. If Ms. Hudson wishes to file a claim for damages with the City, please submit a statement from the claimant as well as any documentation supporting damages, bodily injury, or financial loss via email or to the address provided below.

City of Charlottesville
Attn: Risk Management
3254th St. NW
Charlottesville, VA 22903

Regards,

Jessica Rice, ARM

Risk Management Specialist

City of Charlottesville
Division of Procurement and Risk Management

Office: (434) 970-3862
Fax: (434) 970- 3069

From: Jeff Fogel [mailto:jeff.fogel@gmail.com]
Sent: Friday, February 10, 2017 9:58 AM
To: Robertson, Lisa
Subject: Tasha Hudson

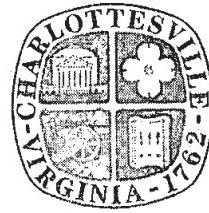
Ms. Robertson,

Ms. Hudson filed a complaint with the CPD regarding a Charlottesville police officer who stopped her in her vehicle in Nelson County and held her for 30-45 minutes. The CPD determined that the complaint was "legitimate," that the officer was acting outside the jurisdiction, that he "was off duty and not acting on behalf of or under the direction of the City's police department at the time of the stop." Nonetheless, the officer was in uniform, driving a CPD vehicle and using his apparent authority as a police officer to conduct that stop. Is the city interested in discussing settlement of this case?

Jeff Fogel

--
Jeffrey E. Fogel
Attorney at Law
913 E. Jefferson Street
Charlottesville, VA 22902
(434) 984-0300

CITY OF CHARLOTTESVILLE
"A World Class City"
Police Department



606 E. Market St. • Charlottesville, Virginia 22902
Telephone: 434-970-3280
Fax: 434-970-3502
www.charlottesville.org/police

December 08, 2016

Ms. Tasha Hudson
833 Mallside Forest Court Apt. 203
Charlottesville, Va. 22901

Dear Ms. Hudson,

This letter is to notify you that the Charlottesville Police Department has completed its administrative investigation into the complaint that you reported on October 12, 2016 at 7:35 PM. Your complaint was reviewed through the Department Chain of Command and by this Office. You alleged that a Charlottesville Police Officer driving a marked police vehicle on Rt. 29 in Nelson County, Virginia, improperly conducted a traffic stop of the car you were driving. We have determined that your complaint is legitimate.

We identified that Officer Freivald was the City Police officer who pulled you over. You correctly note that Officer Freivald was acting outside of the City Police Department's territorial jurisdiction at the time of your traffic stop, and we have further concluded that Officer Freivald was off-duty and not acting on behalf of or under the direction of the City's police department at the time of the stop.

While we do not share the disciplinary results of personnel matters, I will provide you with a copy of our disciplinary matrix if you wish.

Deputy Chief Pleasants has reviewed the case file and has concurred with these findings. We regret the inconvenience and confusion that Officer Freivald created by his actions. If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Det. Sgt. B.N. O'Donnell
Office of Professional Standards
Internal Affairs Unit
434-970-3600 (Office)

Cc: Deputy Chief Pleasants
Lisa Robertson, Chief Deputy City Attorney

From: [Tiffany Clouse](#)
To: Jeff.Fogel@gmail.com
Subject: FW: Tasha Hudson
Date: Wednesday, February 22, 2017 4:03:33 PM

Mr. Fogel,

Please be advised that the city has turned this over to me for further handling. I am in the process of investigating your allegations and will be back in touch with you to discuss this matter at such time I have all of the information.

Sincerely,

Tiffany G. Clouse, AIC, AINS
Sr. Claims Representative

Tiffany G. Clouse

VML INSURANCE PROGRAMS
804-237-7367 (OFFICE)
804-273-0560 (FACSIMILE)
P. O. BOX 3239
GLEN ALLEN, VA 23058
tclouse@vmlins.org

From: Jeff Fogel [mailto:jeff.fogel@gmail.com]
Sent: Wednesday, February 22, 2017 12:46 PM
To: Rice, Jessica A
Cc: Robertson, Lisa
Subject: Re: Tasha Hudson

Ms. Rice,

All of the information about this was provided to the police department, which investigated the incident. Ms. Hudson was stopped by a Charlottesville officer, in uniform and in a marked vehicle in Nelson County. He claimed to have done so because Ms. Hudson did not respond to his commands (made by flashing his high beams) to move to the right. Ms. Hudson, along with her children, were held for some 30 minutes before being allowed to continue their journey home. That officer has been identified by the CPD as Officer Frievald. According to the CPD, Officer Frievald was "acting outside of the City Police Department's territorial jurisdiction at the time of [the] traffic stop" and not on duty and acting on behalf of the department. There was another officer with him who was not identified.

Ms. Hudson was quite upset by the incident and has a recording showing her infant crying uncontrollably. Her daughter was also traumatized. Although there were no pecuniary losses, the emotional distress caused by the unlawful conduct of this officer is significant and Ms. Hudson makes a demand of \$50,000.00

Please contact me if you have any further questions.

Jeffrey E. Fogel

On Mon, Feb 13, 2017 at 12:01 PM, Rice, Jessica A <riceja@charlottesville.org> wrote:
Good Afternoon Mr. Fogel,

The City's Risk Management office has received your request for consideration of settlement in a matter regarding a traffic stop involving a Charlottesville Police officer. As I am sure you are aware, and pursuant to section § 15.2-209 of the Code of Virginia, all claims against the City and requests for compensation must be submitted in writing for processing. Claims filed against the City must contain factual information regarding the details of the incident, as well as the monetary value of the compensation that is being sought. Once the claim is filed with our office, the City's insurance provider will review the file and determine if the claim is compensatory. If Ms. Hudson wishes to file a claim for damages with the City, please submit a statement from the claimant as well as any documentation supporting damages, bodily injury, or financial loss via email or to the address provided below.

City of Charlottesville
Attn: Risk Management
3254th St. NW
Charlottesville, VA 22903

Regards,

Jessica Rice, ARM

Risk Management Specialist

City of Charlottesville
Division of Procurement and Risk Management

Office: [\(434\) 970-3862](tel:(434)970-3862)

Fax: [\(434\) 970- 3069](tel:(434)970-3069)

From: Jeff Fogel [mailto:jeff.fogel@gmail.com]

Sent: Friday, February 10, 2017 9:58 AM

To: Robertson, Lisa

Subject: Tasha Hudson

Ms. Robertson,

Ms. Hudson filed a complaint with the CPD regarding a Charlottesville police officer who stopped her in her vehicle in Nelson County and held her for 30-45 minutes. The CPD

determined that the complaint was "legitimate," that the officer was acting outside the jurisdiction, that he "was off duty and not acting on behalf of or under the direction of the City's police department at the time of the stop." Nonetheless, the officer was in uniform, driving a CPD vehicle and using his apparent authority as a police officer to conduct that stop. Is the city interested in discussing settlement of this case?

Jeff Fogel

--

Jeffrey E. Fogel
Attorney at Law
913 E. Jefferson Street
Charlottesville, VA 22902
(434) 984-0300

--

Jeffrey E. Fogel
Attorney at Law
913 E. Jefferson Street
Charlottesville, VA 22902
(434) 984-0300

From: riceja@charlottesville.org
To: FEEDBACK/PURCHASING; Rice, Jessica A
Subject: General Liability Claim Form Response - 2/14/2017
Date: Tuesday, February 14, 2017 12:04:29 PM

Finance/Risk Management

General Liability Claim Form

Member 520

Claim #17103

1. Today's Date	2/14/2017
2. Date of Loss	10/7/2017
3. Time of Loss	
4. Location of Loss	Rte 29S, Nelson County
5. Name of City Employee making report	Jessica Rice
6. Phone Number of City Employee making report	434-970-3862
7. Email copy of claim to	
8. Incident Description	Off duty CPD officer conducted a traffic stop outside of jurisdiction

Property Owner or Injured Party Involved

9. Name	Tasha Hudson
10. Primary Phone	Unknown
11. Other Phone	
12. Address	833 Mallside Forest Court, Apt. 203 Charlottesville, VA 22901

Property or Injury Involved

13. List damaged property and/or body parts injured	Person
14. Describe damage to property and/or type of injury sustained	Alleges harassment and claims she was detained for unreasonable amount of time.
15. Describe in detail how property became damaged and/or what the injured person was doing prior to injury	
16. Hospital Which Treated Injury	
17. Fatality?	[No]

Insurance Company Involved

18. Insurance Company

Name

19. Insurance Company

Phone

20. Policy or Claim #

Witness/City Employee Involved:

21. Name Officer Jon Freivald

22. Primary Phone 434-970-3280

23. Other Phone

24. Witness/Employee 606 E. Market St. Charlottesville, VA 22901
Address

25. City Department Police

Property Owner or Injured

Party Believes is

Responsible

26. Sewer Backup Claim? [No]

27. Police or Fire Report [No]
Available?

28. Additional Information Citizen initiated a complaint with internal affairs in October
(comments, additional 2016. Investigation was complete at the end of December 2016.
witnesses, info on City Attorney's office receive request for settlement based on
additional parties involved) findings of investigation on 2/10/17. Additional info attached.

From: Robertson, Lisa
To: hardingcounsel@gmail.com
Cc: Robertson, Lisa; "rmilnor@zmc-law.com"
Subject: Miska v Charlottesville--Settlement Discussions
Date: Thursday, April 4, 2019 11:20:39 AM
Attachments: [REDACTED]

This email and the contents hereof are offered for and in connection with confidential settlement discussions between parties in litigation.

Elliott,

[REDACTED]

[REDACTED]

[REDACTED]

Sincerely,

Lisa

Lisa A. Robertson, Esq.
Chief Deputy City Attorney
City of Charlottesville | Office of The City Attorney
P: 434.970.3131 | robertsonl@charlottesville.org

From: automatedreports@vmlins.org
To: Rice, Jessica A
Subject: New Claim #02PC16-27430-01LE --- DO NOT REPLY
Date: Wednesday, February 22, 2017 4:45:14 PM

Charlottesville, City of

On behalf of VML Insurance Programs, the following loss report has been received and assigned to me for handling:

Claimant: Hudson, Tasha
Incident Date: 10/7/2016
Claim Number: 02PC16-27430-01LE
Location/Dept: 270 - POLICE DEPARTMENT
Accident Description: Clmt alleging illegal stop

Providing superior customer service is one of our primary objectives. Please assist us in keeping this commitment by promptly forwarding to our office any additional information you may receive for this claim. When contacting our office, it is helpful to have the claim number available for reference. We look forward to working with you as we complete our investigation and bring this claim to a successful resolution.

Tiffany Clouse
(direct) (804)237-7367
(toll free) 800/963-6800
TCLOUSE@vmlins.org

From: Fogel, Jeff
To: Rice, Jessica A
Cc: Robertson, Lisa
Subject: Re: Tasha Hudson
Date: Wednesday, February 22, 2017 12:45:52 PM

Ms. Rice,

All of the information about this was provided to the police department, which investigated the incident. Ms. Hudson was stopped by a Charlottesville officer, in uniform and in a marked vehicle in Nelson County. He claimed to have done so because Ms. Hudson did not respond to his commands (made by flashing his high beams) to move to the right. Ms. Hudson, along with her children, were held for some 30 minutes before being allowed to continue their journey home. That officer has been identified by the CPD as Officer Frievald. According to the CPD, Officer Frievald was "acting outside of the City Police Department's territorial jurisdiction at the time of [the] traffic stop" and not on duty and acting on behalf of the department. There was another officer with him who was not identified.

Ms. Hudson was quite upset by the incident and has a recording showing her infant crying uncontrollably. Her daughter was also traumatized. Although there were no pecuniary losses, the emotional distress caused by the unlawful conduct of this officer is significant and Ms. Hudson makes a demand of \$50,000.00

Please contact me if you have any further questions.

Jeffrey E. Fogel

On Mon, Feb 13, 2017 at 12:01 PM, Rice, Jessica A <riceja@charlottesville.org> wrote:

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City of Charlottesville

Attn: Risk Management

3254th St. NW
Charlottesville, VA 22903

Regards,

Jessica Rice, ARM

Risk Management Specialist

City of Charlottesville
Division of Procurement and Risk Management

Office: (434) 970-3862
Fax: (434) 970- 3069

From: Jeff Fogel [mailto:jeff.fogel@gmail.com]
Sent: Friday, February 10, 2017 9:58 AM
To: Robertson, Lisa
Subject: Tasha Hudson

Ms. Robertson,

Ms. Hudson filed a complaint with the CPD regarding a Charlottesville police officer who stopped her in her vehicle in Nelson County and held her for 30-45 minutes. The CPD determined that the complaint was "legitimate," that the officer was acting outside the jurisdiction, that he "was off duty and not acting on behalf of or under the direction of the City's police department at the time of the stop." Nonetheless, the officer was in uniform,

driving a CPD vehicle and using his apparent authority as a police officer to conduct that stop.

Is the city interested in discussing settlement of this case?

Jeff Fogel

--

Jeffrey E. Fogel
Attorney at Law
913 E. Jefferson Street
Charlottesville, VA 22902
(434) 984-0300

--

Jeffrey E. Fogel
Attorney at Law
913 E. Jefferson Street
Charlottesville, VA 22902
(434) 984-0300

EXHIBIT C

Jeff Fogel <jeff.fogel@gmail.com>

Fri, Apr 1, 1:46 PM

to FOIA

Ms. Polk,

As per our phone conversation, I am writing because I don't believe the submission is responsive to my request. I assume that in each of the cases that were referenced, there was a written settlement and/or release that were not produced. Moreover, the lack of documents leads to the conclusion that no police misconduct claims were made during the relevant period. Even if referred to the VRSA pool it must come through the city for reference. In addition, there may be claims that were handled by the VRSA as the agent of the city.

I look forward to your prompt response.

Jeff Fogel

EXHIBIT D

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

**CHERRY HENLEY, TANESHA
HUDSON and DAVID MCNAIR,**

Petitioners/Plaintiffs,

v.

Civil Case No. Clad-196

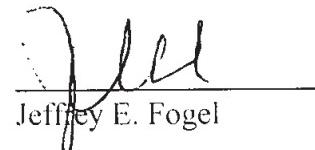
CITY OF CHARLOTTESVILLE

Defendant.

CERTIFICATE OF GOOD CAUSE

Jeffrey E. Fogel, on penalty of perjury, states as follows:

1. I am the attorney for Petitioners/Plaintiffs.
2. I filed the FOIA requests at issue here and conducted the correspondence with Charlottesville officials regarding those requests.
3. I am therefore personally familiar with and attest to the facts set forth in the Petition for Mandamus, except those asserted on information and belief, which I believe to be true.
4. This acknowledgment is filed pursuant to Va. Code § 3713(A).



Jeffrey E. Fogel

RECEIVED

APR 28 2022

COMMONWEALTH OF VIRGINIA



CHARLOTTESVILLE CIRCUIT COURT
Civil Division
315 EAST HIGH STREET
CHARLOTTESVILLE VA 22902
(434) 970-3766

Virginia:
In the CHARLOTTESVILLE CIRCUIT COURT

Case number: 540CL22000196-00
Service number: 001
Service filed: April 28, 2022

Judge:

Served by: CHARLOTTESVILLE CITY
Style of case: CHERRY HENLEY vs CITY OF CHARLOTTESVILLE
Service on: LISA ROBERTSON
CITY ATTORNEY
CITY HALL 605 E MAIN ST
CHARLOTTESVILLE VA 22902

Attorney: FOGEL, JEFFREY E
913 E JEFFERSON STREET
CHARLOTTESVILLE VA 22902

168480-168493

PETITION FOR WRIT OF MANDAMUS, COMPLAINT FOR DECLARATORY AND
Instructions: INJUNCTIVE RELIEF

Returns shall be made hereon, showing service of Summons issued Thursday, April 28, 2022 with a copy of the Complaint filed Thursday, April 28, 2022 attached.

Hearing date :

Service issued: Thursday, April 28, 2022

For Sheriff Use Only

Name Lisa Robertson City Attorney
Address, City, Hwy 605 E Main St Charlottesville
 Personal Service

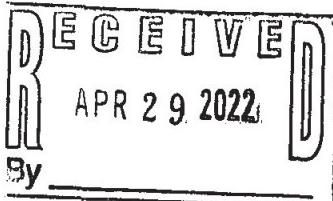
Being unable to make personal service a copy was delivered
in the following manner:

Delivered to person found to charge of usual place of business or
employment during business hours and giving information of its
purpose.

Delivered to family member (not temporary subscriber or guest)
age 16 or older at usual place of abode of party named above after
giving information of its purpose. List name, age of recipient, and
relationship to party named above.

Posted on front door or such door as appears to be the main
entrance of usual place of above, address listed above. (Other
authorized recipient not found.)

Not Found _____
T D Duvan _____
for Sheriff J.E. Brown, III _____
APR 29 2022 _____ Date
By _____ Deputy Sheriff



VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE
CHERRY HENLEY, TANESHA HUDSON
AND DAVID MCNAIR,

Plaintiff,
v.
Case No. CL22-196
CITY OF CHARLOTTESVILLE,
Defendant.

FILED
5/7/22 2:10:30 AM
(Date & Time)
City of Charlottesville
Court Clerk's Office
Lezelle A. Dugger, Clerk
By 
Deputy Clerk

DEMURRER

Comes now the Defendant, the City of Charlottesville (the “City”), by counsel and pursuant to Virginia Code § 8.01-273, and hereby demurs to the Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief.

ALLEGATIONS AND CLAIMS

1. Plaintiffs are three individual residents of the Commonwealth of Virginia. (Compl. ¶¶ 1-3.)

2. Plaintiffs allege that on March 24, 2022, an unidentified person or entity submitted a request pursuant to the Virginia Freedom of Information Act, Va. Code § 2.2-3700, *et seq.*, (“FOIA”) to the City. (Compl. ¶ 5.) In its totality, this request sought “[f]or the years 2020 and 2021, all records concerning the settlement of claims of police misconduct, or other violation of constitutional rights, by the city or any of its employees, whether or not the claim was filed in an administrative or judicial agency.” (*Id.*)

3. Plaintiffs further allege that on April 4, 2022, an unidentified person or entity submitted an additional FOIA request to the City. (Compl. ¶ 7.) In its totality, this request sought “[f]or the years 2017, 2018 and 2019, all records concerning the settlement of claims of

police misconduct, or other violation of constitutional rights, by the city or any of its employees, whether or not the claim was filed in an administrative or judicial agency and whether or not the claim was handled directly by the city or by VRSA on its behalf.” (*Id.*)

4. The City responded to these requests. (Compl. ¶¶ 6, 8; Exhibits A, B.)

5. Plaintiffs allege that the City’s responses to these requests were insufficient. (Compl. ¶¶ 13, 14, 15.) Plaintiffs do not allege, however, that they were the parties who propounded the subject FOIA requests to the City.

6. A plaintiff must establish that he or she has standing to assert a claim. *Lafferty v. School Board of Fairfax County*, 293 Va. 354, 360, 798 S.E.2d 164, 167 (2017). “In order to have a ‘justiciable interest’ in a proceeding, the plaintiff must demonstrate an actual controversy between the plaintiff and the defendant.” *Id.*

7. Here, Plaintiffs do not allege a justiciable interest or the existence of an actual controversy with the City with regard to their claim under FOIA. Plaintiffs merely allege that some unidentified party submitted FOIA requests to the City. Plaintiffs do not allege that they submitted these requests. In fact, none of the three Plaintiffs in this action submitted either of the subject FOIA requests to the City. Accordingly, Plaintiffs have failed to establish standing to pursue their claims, and this case should be dismissed.

8. Similarly, Plaintiffs fail to demonstrate that they have standing to pursue the First Amendment claim advanced in their Second Cause of Action. Plaintiffs allege no concrete personal harm resulting from the terms of any alleged settlement agreement. Plaintiffs, rather, rely on their assertion that the terms of these settlement agreements “violate[] the First Amendment rights not only of the person settling but of the public writ large...” (Compl. ¶ 31.) Alleged harms to the “public writ large” are insufficient to establish standing. *See Friends of the*

Rappahannock v. Caroline Cty. Bd. of Sup’rs, 286 Va. 38, 48-49, 743 S.E.2d 132, 137 (2013) (quoting *Virginia Marine Res. Comm’n v. Clark*, 281 Va. 679, 687, 709 S.E.2d 150, 155 (2011)) (“[T]he complaint must allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.”).

9. Even if Plaintiffs could show standing, however, they nonetheless fail to state a claim for relief under FOIA. Plaintiffs argue that the City should have produced a document absent certain redactions. (Compl. ¶ 13.) Because the City received this document, however, from its attorney pursuant to the attorney’s representation of the City in a potential dispute, this document is subject to the attorney-client and work product privileges. FOIA preserves documents and information subject to these privileges from production through the exemptions recognized in Va. Code §§ 2.2-3705.1(2) and (3).

10. In addition, Plaintiffs argue that the City should have produced documents in the possession of its insurer, the Virginia Risk Sharing Association (“VRSA”). (Compl. ¶ 26.) Contrary to Plaintiffs’ assertions, however, VRSA is not an “agent” of the City, and documents held by VRSA are not possessed by the City. The City cannot produce documents it does not possess.

11. Plaintiffs similarly fail to state a claim for relief under the First Amendment. As Plaintiffs acknowledge, upon receiving a claim seeking damages from the City or one of its employees, the City refers that claim to its insurer, VRSA, for resolution. (Compl. ¶¶ 17, 21.) VRSA manages the claim and, where appropriate, resolves it, often without the direct involvement of the City. (Compl. ¶ 19.) When VRSA reaches a settlement with a claimant, it enters an agreement with the claimant. (Compl. ¶ 17.) Neither the City nor its employees are

party to such a settlement. (Compl. ¶ 19.) A claimant's voluntary agreement to the terms of a settlement with the City's insurer does not implicate any enforceable First Amendment interests.

12. The City will file a Brief in Support of this Demurrer in accordance with an agreed upon briefing schedule. The City hereby incorporates its Brief in Support of its Demurrer, as if fully set forth herein. The City further incorporates into its Demurrer the arguments laid out in its Plea in Bar, filed herewith, and any brief in support of its Plea in Bar that should be filed.

WHEREFORE, Defendant, the City of Charlottesville, by counsel, respectfully requests that the Court issue an Order:

- (a) Granting the City's Demurrer;
- (b) Sustaining the City's Plea in Bar;
- (c) Dismissing the Petition and Complaint with prejudice;
- (d) Awarding the City its attorneys' fees and costs; and
- (e) Providing to the City such other and further relief as the Court deems just and proper.

CITY OF CHARLOTTESVILLE

By Counsel



David P. Corrigan (VSB No. 26341)
Blaire H. O'Brien (VSB No. 83961)
Harman, Claytor, Corrigan & Wellman
P.O. Box 70280
Richmond, Virginia 23255
804-747-5200 - Phone
804-747-6085 - Fax
dcorrigan@hccw.com
bobrien@hccw.com

C E R T I F I C A T E

I hereby certify that a true copy of the foregoing was sent via U.S. mail and email this
16th day of May, 2022 to:

Jeffrey E. Fogel, Esq.
VSB No. 75643
913 E. Jefferson Street
Charlottesville, VA 22902
434-984-0300 x13 - Phone
434-220-4852 - Fax
jeff.fogel@gmail.com



Blaire H. O'Brien

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE
CHERRY HENLEY, TANESHA HUDSON
AND DAVID MCNAIR,

Plaintiff,

v.

Case No. CL22-196

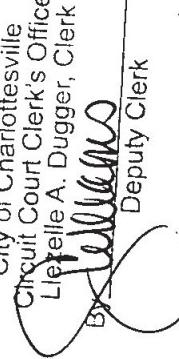
CITY OF CHARLOTTESVILLE,

Defendant.

PLEA IN BAR

NOW COME the Defendant, the City of Charlottesville (the “City”), by counsel, and hereby file this Plea in Bar in response to the Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief (the “Complaint”). The Complaint is barred because Plaintiffs cannot establish that they have standing to pursue either of the claims presented in the Complaint for the following reasons:

1. Plaintiffs are three individual residents of the Commonwealth of Virginia. (Compl. ¶¶ 1-3.)
2. Plaintiffs allege that on March 24, 2022, an unidentified person or entity submitted a request pursuant to the Virginia Freedom of Information Act, Va. Code § 2.2-3700, *et seq.*, (“FOIA”) to the City. (Compl. ¶ 5.) In its totality, this request sought “[f]or the years 2020 and 2021, all records concerning the settlement of claims of police misconduct, or other violation of constitutional rights, by the city or any of its employees, whether or not the claim was filed in an administrative or judicial agency.” (*Id.*)
3. Plaintiffs further allege that on April 4, 2022, an unidentified person or entity submitted an additional FOIA request to the City. (Compl. ¶ 7.) In its totality, this request

FILED
5/17/22 e ID: 30
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Leanne A. Dugger, Clerk
Deputy Clerk


sought “[f]or the years 2017, 2018 and 2019, all records concerning the settlement of claims of police misconduct, or other violation of constitutional rights, by the city or any of its employees, whether or not the claim was filed in an administrative or judicial agency and whether or not the claim was handled directly by the city or by VRSA on its behalf.” (*Id.*)

4. The City responded to these requests. (Compl. ¶¶ 6, 8; Exhibits A, B.)

5. Plaintiffs allege that the City’s responses to these requests were insufficient. (Compl. ¶¶ 13, 14, 15.) Plaintiffs do not allege, however, that they were the parties who propounded the subject FOIA requests to the City.

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7. Here, Plaintiffs do not allege a justiciable interest or the existence of an actual controversy with the City with regard to their claim under FOIA. Plaintiffs merely allege that some unidentified party submitted FOIA requests to the City. Plaintiffs do not allege that they submitted these requests. In fact, none of the three Plaintiffs in this action submitted either of the subject FOIA requests to the City. Accordingly, Plaintiffs cannot establish standing to pursue their claims, and this case should be dismissed.

8. Similarly, Plaintiffs fail to demonstrate that they have standing to pursue the First Amendment claim advanced in their Second Cause of Action. Plaintiffs allege no concrete personal harm resulting from the terms of any alleged settlement agreement. Plaintiffs, rather, rely on their assertion that the terms of these settlement agreements “violate[] the First Amendment rights not only of the person settling but of the public writ large...” (Compl. ¶ 31.)

Alleged harms to the “public writ large” are insufficient to establish standing. *See Friends of the Rappahannock v. Caroline Cty. Bd. of Sup’rs*, 286 Va. 38, 48-49, 743 S.E.2d 132, 137 (2013) (quoting *Virginia Marine Res. Comm’n v. Clark*, 281 Va. 679, 687, 709 S.E.2d 150, 155 (2011)) (“[T]he complaint must allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.”).

9. In support of this Plea in Bar, City will file a brief pursuant to an agreed upon briefing schedule and hereby incorporates and adopts that Brief in Support of Plea in Bar as if fully set forth herein. The City further incorporates the arguments presented in its Demurrer, filed herewith, as well as any arguments presented in any Brief in Support of Demurrer it should file in the future as if fully set forth herein.

WHEREFORE, for all of the foregoing reasons, the City of Charlottesville, by counsel, respectfully requests that this Court sustain—with prejudice and in its entirety—this Plea in Bar because Plaintiffs lack standing.

WHEREFORE, Defendant, the City of Charlottesville, by counsel, respectfully requests that the Court issue an Order:

- (a) Granting the City’s Demurrer;
- (b) Sustaining the City’s Plea in Bar;
- (c) Dismissing the Petition and Complaint with prejudice;
- (d) Awarding the City its attorneys’ fees and costs; and
- (e) Providing to the City such other and further relief as the Court deems just and proper.

CITY OF CHARLOTTESVILLE

By Counsel



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C E R T I F I C A T E

16th I hereby certify that a true copy of the foregoing was sent via U.S. mail and email this day of May, 2022 to:

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Blaire H. O'Brien

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

Cherry Henley, et al,)
)
Plaintiff(s),) Case No. 3:22CV00027
) State Court No. 540CL22000196-00
v.)
)
City of Charlottesville,)
)
Defendant(s).)

O R D E R

This case was recently removed from the Circuit Court for the City of Charlottesville to the United States District Court for the Western District of Virginia at Charlottesville. This court, finding it necessary and proper to do so, hereby REQUESTS that the original case file in your Court be forwarded to the Clerk of this court at 255 W. Main Street, Room 304, Charlottesville, VA 22902, or submitted through this court's Case Management and Electronic Case Filing system (CM/ECF).

The Clerk is directed to send a copy of this Order to the Clerk of the Circuit Court for the City of Charlottesville.

ENTERED: 5/19/2022


NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE

RECD
5/31/2022